

STATE OF MICHIGAN
COURT OF APPEALS

JOHN KOPENICK,

Petitioner-Appellee,

v

DEPARTMENT OF CORRECTIONS,

Respondent-Appellant.

UNPUBLISHED

March 29, 2002

No. 229671

Wayne Circuit Court

LC No. 00-022644-AH

Before: Whitbeck, C.J., and Wilder and Zahra, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order granting petitioner's writ of habeas corpus and immediately releasing petitioner from incarceration and reinstating parole. We reverse.

Petitioner was originally paroled after serving his minimum sentence for an armed robbery conviction. In September 1999, after having his parole revoked and reinstated several times, a warrant was issued based on petitioner's failure to notify respondent of his changed residence. On October 22, 1998, petitioner pleaded guilty to the parole violations of failing to report and failing to notify respondent of a change of residence. It is undisputed that the hearing officer made a disposition recommendation to the Parole Board of a ninety-day hold. Despite that recommendation, on December 2, 1999, the Parole Board revoked petitioner's parole for a term of twelve months. Thereafter, petitioner filed a writ of habeas corpus, requesting immediate release from custody and reinstatement to parole status because the Parole Board failed to timely notify him of its findings of fact and reasons for the decision to revoke parole.¹ At the hearing on the petition, the trial court determined that petitioner's guilty plea to the parole violations was invalid because petitioner did not receive the recommendation promised in exchange for his plea. The court issued an order granting the writ for habeas corpus, immediately releasing petitioner from incarceration and reinstating petitioner's parole status. Respondent filed this appeal, challenging the propriety of the court's decision to grant habeas corpus relief.

¹ Petitioner did not request relief specifically on the basis of a failed plea bargain.

Upon review of the record, we conclude that the trial court erred in granting the writ of habeas corpus. The only evidence in the lower court record involving the circumstances of petitioner's guilty plea is petitioner's parole violation arraignment form. That form indicates that petitioner pleaded guilty to two parole violations and that the disposition recommendation was made. Significantly, however, there is no record evidence that petitioner was induced to plead guilty in exchange for the disposition recommendation. See, generally, *People v Cobbs*, 443 Mich 276, 283; 505 NW2d 208 (1993). A hearing officer is required by statute to make a recommendation in every parole violation case. MCL 791.240a(5) provides that if a hearing officer determines that a parole violation has occurred, the "hearings officer shall present the relevant facts to the parole board and make a recommendation as to the disposition of the charges." Thus, the fact that a recommendation was made is not evidence of a failed plea bargain. Under these circumstances, where there is no evidence to the contrary, petitioner's plea and the Parole Board's revocation of parole were valid.²

Given that conclusion, we need not consider respondent's additional issues on appeal challenging the propriety of the writ of habeas corpus.

Reversed.

/s/ William C. Whitbeck
/s/ Kurtis T. Wilder
/s/ Brian K. Zahra

² Even if there was evidence in the record from which to conclude that petitioner's plea was induced by the hearing officer's recommendation, the proper remedy would be to allow petitioner to enter a new plea, not to grant petitioner immediate release and reinstatement of parole. See MCR 6.310.